

SENATE BILL REPORT

SB 5616

As Reported by Senate Committee On:
State Government, February 17, 2017

Title: An act relating to limiting the enforcement of administrative rules and policies.

Brief Description: Limiting the enforcement of administrative rules and policies.

Sponsors: Senator Fortunato.

Brief History:

Committee Activity: State Government: 2/15/17, 2/17/17 [DPS, DNP].

Brief Summary of Substitute Bill

- Prohibits any rule or policy adopted by a state agency after July 1, 2017, from being enforced unless it is adopted pursuant to the Administrative Procedure Act (APA), codified in the Washington Administrative Code (WAC), and has either been ratified by act of the Legislature or adopted by an agency that has successfully completed an excellence assessment.

SENATE COMMITTEE ON STATE GOVERNMENT

Majority Report: That Substitute Senate Bill No. 5616 be substituted therefor, and the substitute bill do pass.

Signed by Senators Miloscia, Chair; Zeiger, Vice Chair; Pearson.

Minority Report: Do not pass.

Signed by Senators Hunt, Ranking Minority Member; Kuderer.

Staff: Melissa Van Gorkom (786-7491)

Background: The APA details procedures that state agencies are required to follow when adopting rules. Under the APA, a rule includes an agency order, directive, or regulation of general applicability that:

- could result in a penalty or sanction;
- establishes a process for agency hearings;

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- addresses qualifications or requirements relating to benefits or privileges conferred by law; and
- addresses qualifications or standards for commercial activity or professional licenses professions.

In order to adopt a rule, the APA generally requires that an agency:

- have the statutory authority to adopt the rule;
- provide public notice of the proposed rulemaking and publish notice of a proposed rule in the state register; and
- provide an opportunity for the public to comment on the proposed rules, both in writing and at a hearing.

Summary of Bill (First Substitute): After July 1, 2017, a state agency may not enforce a rule or policy until it has been adopted under the APA, codified in the WAC, and either ratified by an act of the Legislature or adopted by an agency that has successfully completed an excellence assessment.

Excellence assessment is defined as an assessment of agency operational performance by a trained national or state examiner using an excellence framework published by the national institutes of standards and technology.

EFFECT OF CHANGES MADE BY STATE GOVERNMENT COMMITTEE (First Substitute):

- Exempts agencies that have successfully completed an excellence assessment from the requirement to have their rules ratified by act of the Legislature.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill contains an emergency clause and takes effect on July 1, 2017.

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: The bill requires that a rule must be run through the Legislature first. Administrative law has thrown legislative intent on its head. The legislative intent and authority granted to agencies has gone unchecked causing a domino effect from the agency creating the law, to local authority implementing it, and the citizen is impacted. This means that the smallest individual is held to the same standards as large agencies, which puts an undue burden on land owners in our state. This bill adds another layer of accountability and is a good step in the right direction to help with regulatory reform.

Persons Testifying: PRO: Senator Phil Fortunato, Prime Sponsor; Cindy Alia, Citizens Alliance for Property Rights; Mark Johnson, Washington Retail Association.

Persons Signed In To Testify But Not Testifying: No one.